SOCIETAS APERTA FEMINARUM IN IURIS THEORIA

5TH ANNUAL CONFERENCE

CONSENT

10TH, 11TH, 12TH SEPTEMBER 2024

UNIVERSITY OF GLASGOW

The idea of government by consent is an essential principle of constitutional morality. Arising as early as Plato's Crito, it gained prominence in the seventeenth century with the writings of Hobbes and Locke, and features in landmark documents such as the US Declaration of Independence 1776 ("governments…deriving their just powers from the consent of the governed") and the Universal Declaration of Human Rights 1948 (article 21.3 "The will of the people shall be the basis of the authority of government"). In social contract theory, the role of consent is to ground the moral legitimacy of political authority. The argument is that when a state has the consent – express or tacit, real or hypothetical – of its people, it can legitimately demand obedience to its laws, and has a legitimate claim to the use of force when its laws are breached. It follows then that, under this view, political obligation – commonly defined as the moral duty to obey the law – is also grounded on the consent of legal subjects.

In constitutional theory, the consent of the governed underpins core principles of constitutional law such as the principle of parliamentary sovereignty, and shapes other relevant principles and doctrines in different ways, such as the rule of law, the separation of powers, and judicial review. Judges and legislators then rely on these to make decisions about allocation of power in disputes over institutional design (who gets do to what in constitutional government) and over individual rights (what is it that consenting majorities cannot take away from dissenting minorities). Moreover, constitutional decision-making processes such as referendums, constitutional arrangements such as devolution, and constitutional instruments such as sunset clauses bear on the normative appeal of the consent of the people. Similarly, recent debates about the relation between constitutionalism and populism have brought to the fore the question of the meaning, relevance and limitations of 'the will of the people'.

If consent is relevant to questions of political philosophy and public law it is no less so because it is central to questions of ethics. It matters due to what Heidi Hurd called "the moral magic of consent": by mere willing, consent turns permissible what would otherwise be impermissible. For instance, it makes entering into someone's home a welcomed visit, instead of a rude invasion of property that could amount to unlawful trespassing. The constitutive nature of consent (whether it is a state of mind or requires a performance of will), its normative relevance (whether it can, in fact, be morally transformative), the values it may serve (such as autonomy, agency, or equality) or its conditions of validity (when does someone have

capacity to consent, what limits may be imposed by third party's interests) are issues subject to extensive debate in the legal theory and philosophy literatures.

Discussions on consent also take place within different areas of doctrinal law e.g. contract, medical, labour or family law, notably in the criminal law of sexual offences, and more recently in the area of law and technology.

For instance, in post #MeToo times, conversations about what should count as valid consent to sex have come to the fore of public and scholarly agendas, together with reforms of criminal law and policy regulations in different countries. This comes on the heels of ongoing feminist debates on the merits and perils of affirmative consent standards, on the harms of unwanted consensual sex, and on different approaches to sexualities.

New technologies of artificial intelligence, such as deepfakes, bring further complications to our normative understandings and applications of consent and the principles and laws that regulate it. And in contract law, old debates about the balancing of autonomy or consent with fairness or efficiency is gaining new attention in light of the meteoric rise of standard form contracting and the increased use of contracts in the design of governance mechanisms beyond privity.

The conference will aim to address questions including, but not limited to:

How should we best conceive of consent as an individual's normative power?

What are the different values that consent serves in its different applications to different areas of the law?

How relevant is consent, how much does it matter for questions about rights and duties in private and public law?

Are there any paradoxes of consent, for instance those critically identified in theories of social contract, that might also arise in applications of consent in ethics and private law?

What is the relation between consent and alienation in law?

What can be learnt from a comparative analysis of sexual assault laws and affirmative consent standards to improve ongoing reforms in criminal law and sexual violence campus policies around the world?

How is the ideal of the consent of the governed shaping our current constitutional orders?

PLEASE NOTE: given the nature of the topic, the event will likely include discussions around rape and sexual offences.

LOCATIONS

All sessions will be held in the Main Building, West Quad - South area A24 on the map below. Coffee and lunch breaks will be hosted in the School of Law, area A19 on the map.

Go to Gilbert Scott Building (Main Building) for:

- Keynote Lectures: Room 255 - Humanity Lecture Theatre (level 2)
- Panels: Room 466 - Lecture Theatre (level 4)
- Parallel sessions: Rooms 251 and 253 (level 2) and Room 466 - Lecture Theatre (level 4)
- SAFI Annual General Meeting: Room 466 - Lecture Theatre (level 4)

Go to Stair Building (School of Law) at 8 Professors' Square for:

- Coffee breaks: Halliday Room (level 3)
- Lunch: Halliday Room (level 3)

University of Glasgow

Campus map

ZONE A

Bute Hall	A13
Chapel	A8
Concert Hall	A12
East Quadrangle	A5
Gilbert Scott Building	A10
Gilchrist Postgraduate Club	A26
Hunter Halls	A14
James Watt North Building	A2
James Watt South Building	A1
Kelvin Gallery	A7
McIntyre Building	A22
Main Gatehouse	A21
Pearce Lodge	A4
Principal's Lodgings	A18
Randolph Hall	A10
Stair Building	A19
West Quadrangle	A6

ZONE B

Bower Building	B7
Davidson Building	B3
Isabella Elder Building	B6
Joseph Black Building	B4
Kelvin Building	B8
West Medical Building	B2
Western Infirmary Lecture Theatre	B9
Wolfson Building	B10

ZONE C

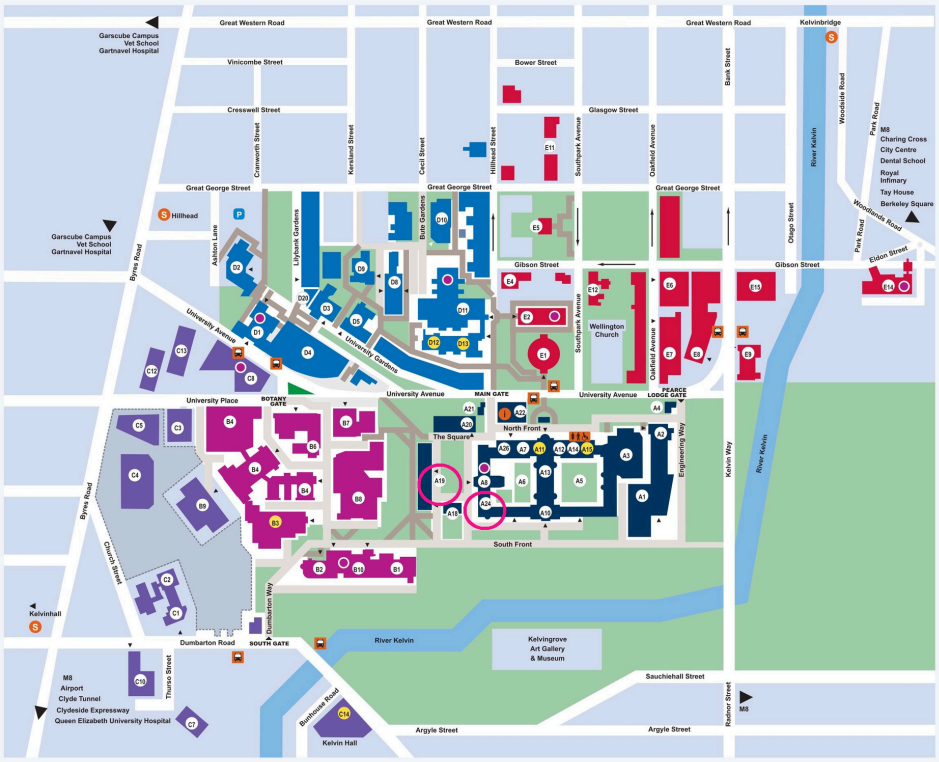
Advanced Research Centre Building	C4
BHF Glasgow Cardiovascular Research Centre	C12
(Glasgow) Biomedical Research Centre Sir Graeme Davies Building	C13
Clarice Pears Building	C5
Glasgow International College	C1
Mathematics & Statistics Building	C3
Robertson Building	C2
Wolfson Medical School Building	C8

ZONE D

Adam Smith Building	D8
Boyd Orr Building	D1
Hetherington Building	D10
James McCune Smith Learning Hub	D4
Library	D11
Lilybank House	D9
Molema Building	D2
Queen Margaret Union	D3
Sir Alexander Stone Building	D5
Sir Alwyn Williams Building	D20

ZONE E

Florentine House	E4
Fraser Building	E2
Gilmorehill Halls	E9
Glasgow University Union	E8
McMillan Reading Room	E1
Rankine Building	E7
School of Education (St Andrews Building)	E14
Sir Charles Wilson Building	E15
Southpark House	E5
Stevenson Building	E6



Please note: there is major campus redevelopment underway and some access routes may be restricted.

For more information see **glasgow.ac.uk/maps**.

Updated August 2022

University of Glasgow, Glasgow, G12 8QQ

September 10

09.15-09.30h - Humanity Lecture Theatre
Registration & Welcome

09.30-11h - Humanity Lecture Theatre
Keynote Lecture 'Consent and Consensuality'
Professor Elinor Mason - UC Santa Barbara (Philosophy)

11-11.30h - Halliday Room
Coffee break

11.30-12.30h - Room 466 Lecture Theatre
Comparative law of sexual offences
Chair: Claire McDiarmid - Glasgow (Law)

- Fiona Leverick – Glasgow (Law)
- Ana Díaz Azcunaga & Anjali Rawat – Oxford (Law)

12.30-14h - Halliday Room
Lunch

14-14.30h - Room 466 Lecture Theatre
SAFI Annual General Meeting

14.30-16.00h - Room 466 Lecture Theatre
Consent to sex
Chair: Katharine Jenkins - Glasgow (Philosophy)

- Karamvir Chadha – Durham (Law)
- Giada Fratantonio – Glasgow (Philosophy)
- Marthe Goudsmit Samaritter – Max Planck (Law)

16.30-18.30h
Option 1: *Glasgow Women's Library West End Women's Heritage Walk* (pre-booking required)
Option 2: Drinks at Brel, Ashton Lane

September 11

09.30-11h - Humanity Lecture Theatre
Keynote Lecture 'Consent to the Law in Oligarchic Republics'
Dr Camila Vergara - Essex (Business)

11-11.30h - Halliday Room
Coffee break

11.30-13h - Room 466 Lecture Theatre
Panel 3: Consent in Political Philosophy
Chair: Marco Goldoni - Glasgow (Law)

- D Guerrero & A Pérez-Fernandez – Barcelona (Philosophy)
- Sabrina Zucca-Soest – Hamburg (Political Sciences)
- Alma Diamond – Michigan (Law)

13.00-14.30h - Halliday Room
Lunch

14.30-16h - Room 466 Lecture Theatre
Panel 4: Arts, Phenomenology & Education
Chair: Kristin Albrecht - Salzburg (Law)

- Elisabetta Orlandi – Independent (Literature)
- Ana C. Gómez Sierra - Georgia State (Philosophy)
- Anabel van Toledo & Veerle van Wijngaarden - Independant/Amsterdam (Philosophy)

19.15h
Conference dinner at Hillhead Bookclub, Vinicombe St

September 12

10-11h - Room 466 Lecture Theatre
Medical Law & Ethics
Chair: Claudia Wirsing - Hamburg (Law)

- Marie-Andrée Jacob – Leeds (Law)
- Lisa Forsberg – Oxford (Philosophy)

11-11.30h - Halliday Room
Coffee break

11.30-13h - Room 466 Lecture Theatre
Contract & Family Law
Chair: Stephen Bogle - Glasgow (Law)

- Gilat Juli Bachar – Temple (Law)
- Irina Sakharova – Durham (Law)
- Janeen Carruthers & Felicity Belton – Glasgow (Law)

13-14.30h - Halliday Room
Lunch

14.30-16h
PGR PARALLEL SESSIONS

Consent to Sex - Room 466 Lecture Theatre
Chair: Claudia Wirsing - Hamburg (Law)

- Leonie Buning – Osnabrueck (Philosophy)
- Eli Benjamin Israel – Temple (Philosophy)
- Madeleine Kenyon – Waterloo (Philosophy)
- Melissa Bell – Barcelona Pompeu Fabra (Law)
- Mireia Marquez – Barcelona (Law)

September 12

Consent to Government - Room 251
Chair: Sabrina Zucca - Helmut-Schmidt (Political Sciences)

- Ludovica Filieri – Verona (Philosophy)
- Evgenia Sonnabend – Freiburg/Free Berlin (Philosophy)
- Juliana Talg – Munich (Law)
- Sarah Ketteniß – Hamburg (Political Sciences)

Medical and AI Ethics - Room 253
Chair: Kristin Albrecht - Salzburg (Law)

- Mollie Cornell – Bristol (Law)
- Rebecca Brione – KCL (Philosophy)
- Luiza Araújo – Barcelona (Law)

16.00h
Farewell drinks at Òran Mór, Byres Road

Keynote Lecture

Consent and Consensuality

by Professor Elinor Mason

It is well recognized by feminist thinkers that the standard conception of consent is problematic when applied to sexual consent in a patriarchal context. Consent has a contractual feel to it, in which one person allows another to do something to them. This does not capture what goes on in the ideal sort of sex, and, in the common assumption that in heterosexual relations the woman is the one to consent, further entrenches a problematic view of gender relations. Some recent theorists have suggested that consent is not always necessary for morally permissible sex. I argue that rather than abandoning the idea that consent is essential to morally permissible sex, we need to reconceive the notion of consent as it functions in sexual contexts: we should make a distinction between consent and consensuality. Consensuality is symmetrical, and is not contractual, but captures the element of willingness that is essential to morally permissible sexual contact.

Elinor Mason is Professor in Philosophy at the University of California, Santa Barbara. Prior to joining UC Santa Barbara, Professor Mason was Senior Lecturer at the University of Edinburgh and was a Laurence S. Rockefeller Visiting Fellow at Princeton University. Professor Mason's interest relate broadly to feminism, moral responsibility, and ethics. Her publications include *Ways to be Blameworthy: Rightness, Wrongness, and Responsibility* (Oxford University Press 2019) and *Feminist Philosophy: An Introduction* (Routledge 2021).

Keynote Lecture

Consent to the Law in Oligarchic Republics

by Dr Camila Vergara

The rule of law is a regulatory structure that is based on democratic and procedural legitimacy. In representative democracies laws are legitimate when they are created within established rules, which presuppose the consent of the governed. Because citizens have the right to select representatives for Parliament, and representatives make he law, then citizens are conceived as indirect legislators.

And because all partake, directly or indirectly, in the making of the law, law is legitimate. Moreover, people living in a territory are said to give their 'tacit consent' to the regulatory structure because they use it and benefit from it. But what happens in a context of systemic corruption, in which democracies have become oligarchic, and citizens have only marginal influence on the making of law?

Can we fairly say that we consent to law that is oppressive, from which there is no real exit, and that we are powerless to change? In my presentation I will offer a critical analysis of the law in corrupt republics, putting into question the theory of consent on which the liberal State is based, and propose a model of active consent in which consent is based on the power to meaningfully contest the law through direct democratic mechanisms.

Camila Vergara is Senior Lecturer at the University of Essex and acts as an advisor to international and grassroots organisations on civil and political rights, and on procedures and institutions for direct deliberative democracy. Her publications include *Systematic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* (Princeton University Press 2020) and she is the winner of the Britain and Ireland Association for Political Thought 2023 Early-Career Prize.

ABSTRACTS

COMPARATIVE LAW OF SEXUAL OFFENCES

Fiona Leverick University of Glasgow (Law)

Consent in the Jury Room

Much attention is rightly devoted to how consent should be defined in the criminal law of sexual offences. But there is an additional question of – regardless of what definition is adopted – how jurors assess the competing claims of the accused person and the complainer about whether consent was present or absent. This is not so much a definitional question, but one of assessing the credibility of the witnesses. What factors do jurors look to in order to decide who to believe on the question of consent? In this paper, I will present the main findings of mock jury research undertaken in Scotland which attempts to answer this question. The research analysed the deliberations of 32 mock juries who were asked to determine a fictional rape case. It demonstrates that in deciding whether or not the complainer consented, jurors were unduly influenced by rape myths – false and prejudicial beliefs about rape and rape complainers. These beliefs, it will be argued, are the main barrier to the securing justified convictions in rape cases that are determined by a jury.

Ana Díaz Azcunaga & Anjali Rawat University of Oxford (Law)

Mapping Affrimative Consent in Commonweath Countries

In the last decades there appears to have been a shift in social and legal understandings of sexual consent. Many in academia, civil society and legal institutions have advocated for a shift to models of 'affirmative consent'. This demand aims to shift the onus from the victim, who would previously be required to demonstrate 'active dissent', to the perpetrator, who would now need to prove 'communicated consent'. A shift from 'no means no' to 'yes means yes'.

Our work examines how consent is understood in the law of sexual offences in some commonwealth jurisdictions and two university campuses in the United States that have adopted 'affirmative consent' standards for addressing sexual violence. We examine the legal provisions and the judicial interpretations of consent against five properties of consent and the capacity or competence to consent. We argue that for consent to be truly considered affirmative, it must be voluntary, informed, revertible, specific and unburdensome. We believe there is value in these standards as they promote a just understanding of consent by illuminating the background assumptions in cases of sexual violence.

The focus on communication of consent in some affirmative consent models, often through words or action, has been rightly criticised for expecting 'consent' to do all the work in cases of sexual violence. Our comparative analysis reveals that not all affirmative consent models prioritise communication. In the jurisdictions we surveyed, the definition of affirmative consent varies widely and has been introduced either under legislative or judicial authority. It is unclear why the existing consent and competence standards cannot be interpreted as free and voluntary agreement that requires communication of consent for any sexual act. We argue that consent definitions cannot on their own shift the role that societal attitudes play in the interpretation of legal norms. We need legal standards that counter the tendency to place all the burden and blame of preventing sexual violence on the victim, along with measures that address the discrimination women face when attempting to access the justice system and throughout the criminal proceedings. Hence, consent, though an important part of this reform, is not the only part.

ABSTRACTS

CONSENT TO SEX

Karamvir Chadha University of Durham (Law)

Sexual Negligence

The law expresses criticism of sexual wrongdoing primarily through criminal offences such as rape and sexual assault. These offences are framed in terms of the absence of consent. This focus on consent gives rise to a dilemma. The law must either: fail to criticise the full range of sexual wrongdoing; or express any criticism of sexual wrongdoing in terms of the absence of consent, regardless of whether this adequately reflects the moral landscape. How should the law deal with this dilemma?

I argue for the recognition of sexual negligence as a new species of the tort of negligence, much like medical negligence. Such recognition has two theoretical benefits. First, it dissolves the dilemma by increasing the vocabulary through which the law can criticise sexual wrongdoing – supplementing the criminal law's focus on sexual consent. Second, it makes the law's approach to negligence in the sexual domain more consistent with its approach to negligence in other domains such as medicine. Such recognition also plausibly has three practical benefits for victims. First, it gives them more control over whether their complaint of sexual wrongdoing is pursued in the courts. Second, the civil rather than criminal standard of proof makes success at trial more likely, other things being equal. Third, it is less prone to putting the victim 'on trial' than the criminal law of sexual offences, because the negligence framework shifts the focus from whether the victim consented to whether the defendant breached a duty they owed the victim.

Giada Frantantonio University of Glasgow (Philosophy)

What Does Sexual Consent Supervene On?

While philosophers and legal theorists have provided various accounts of sexual consent, the question of the supervenience base of sexual consent has not so far been addressed. In this paper, we rectify this neglect by investigating the supervenience base of consent, and by showing its legal implications for the epistemology of sexual assault claims.

First, we consider a narrow conception of the supervenience base of consent. According to this narrow view, facts about whether A consents to sex at a time t supervene on A's mental and intentional behavioural facts at time t. The narrow conception has plausibility for at least two reasons: it's in line with the spirit of the current accounts of consent in the literature, including subjectivists (Hurd 1996; Alexander 1996) and performativists (Dougherty 2013 2015); it vindicates some plausible claims about the epistemology of consent, including the idea that a subject A enjoys a special epistemic authority over claims about whether A has given consent.

Despite it's prima facie plausibility, we argue that the narrow view faces serious problems when we consider cases of non-ideal sex, e.g. cases involving deception or mild dementia. We show that, in such cases, two subjects who have the exact same mental profile can differ in whether they give consent to sex at a given time t. And yet, the narrow conception of supervenience is incompatible with this possibility.

Finally, we take these problems to motivate an alternative wide conception of the supervenience base. On the wide view, facts other than A's mental profile at t can be relevant in determining whether A gave consent at t. We conclude by investigating the legal implication the wide conception has, e.g, for the problems underpinning the rules of corroboration, and for the assessment of the truth of sexual assault claims more generally.

Marthe Goudsmit Samaritter Max Planck Institute (Law)

Towards a relational model of consent: problematising individualed power to normatively transform of shared acts.

This paper argues that consent should not be conceived as an individual's normative power, but rather as a relational exercise that can morally transform otherwise wrongful acts. The paper contrasts an individualistic understanding of personhood with a relational one. It argues that the former views consent as a unilateral permission (Dempsey, 2013). Relational consent is not one-sided. Rather, it exists, like a relationship itself, between the persons that consent. Per the proposed relational consent model there only is consent if all involved parties consent. On atomistic consent the question is whether individuals consented. On relational consent the question is whether the *act* is consensual. The paper argues that moral transformation only takes place in the latter case.

Using sexual penetration as an example, the paper problematises individualised consent: the focus is on whether the person subjected to the penetration consents, not on whether the person who penetrates consents. While there are good reasons to take the consent of the person subjected to penetration very seriously (Dempsey and Herring, 2007), that does not mean that the other's consent should be irrelevant. It is argued that this approach risks misunderstanding consent, suggesting that sex can be consensual for one party but not the other, a notion challenged by relational consent. Relational consent asserts that an act is consensually valid only if all participants want it, thereby addressing the act's moral permissibility relationally rather than individually.

The paper critiques the atomistic consent model for suggesting actions are *done to* others, rather than together (MacKinnon, 2016). Such a perspective is misaligned with what is considered 'good sex', which is a shared act rather than something one person is subjected to by another. The paper proposes a relational consent model, rooted in the understanding that persons are inherently relational.

ABSTRACTS

CONSENT IN POLITICAL PHILOSOPHY

Margaret Martin University of Western Ontario (Law)

Reflections on Consent and the Social Contract

In a paper I published in 2020, “Persuade or Obey: Crito and the Preconditions for Justice," I explore the conversation between Crito and "The Laws." I argue the following: a) the arguments offered by The Laws meant to persuade Crito (so they likely do not necessarily capture Socrates's own views in full); and b) the arguments are persuasive, in large part, because they are about Socrates and Crito. While this does not mean the arguments are not generalizable, it does mean great care must be taken when attempting to tease abstract, general lessons from the exchange occurring in a particular historical context. In other words, the relationship between the universal and the particular is mediated (at least in part) by a socio-historical context. Given that most accounts of the social contract are more general in nature (Hobbes's account is but one example), it is helpful to juxtapose the account that emerges from Plato's Crito with these more familiar approaches. I've come to believe that it is difficult to abandon the idea of a social contract (we even find these ideas quietly but powerfully informing the works of Joseph Raz and HLA Hart). Consequently, it is imperative that we identify all shortcomings. In the course of exploring these themes, I hope to draw some lessons about the impulse to articulate legal and political ideas as acontextual, universal truths.

David Guerrero & Andrea Pérez-Fernández University of Barcelona (Philosophy)

From Consent to Control

Recent debates in moral philosophy have questioned the centrality of consent inherited from the early modern Western tradition. Thus, critics of "liberalism" of all sorts, point out that "consent" is a poor proxy of choice, permission, political sovereignty, legal agreement, etc. Much of these criticisms can be explained as a dismissal of what economists call "revealed preferences"—i.e., what agents in fact say when they give "consent" to the power of others. Critics suggest that political philosophers should either, so to speak, dig deeper (on the cognitive level, delving into how such preferences were built internally) or get a bird's eye view (studying, on the sociological level, how the background circumstances of an agent incentive some preferences over others). Or, even better, doing both things at the same time, since the cognitive and institutional domains often relate to each other. These intuitions undermine the import of "consent" in countless contemporary debates (e.g., critical views of labor law, feminist views of sex and pornography, radical-democratic perspectives on government, and so on).

However, we also consider how this new emphasis on the politics of "control" may still lack a nuanced view of human psychology, of the pervasive effects of ideology or social structures. Philip Pettit's political theory and certain political interventions in the recent debate on sexual consent in Spain offer good examples of this. We claim that, in these cases, the movement from consent to control is still reliant on an overly atomistic picture of social and political relationships, unaware of how structural domination weakens individual and collective agency. Our point is that if social norms and structures are believed to undermine the capacity of agents to give "consent" (to others or to political institutions), the most plausible scenario is that these very processes also challenge the capacity of these agents to "control". If institutional design (and particularly law) is the only focus of this movement from consent to control, then this movement is insufficient in achieving its own goals. In our view, the question at stake is not only how to create better institutions and relationships (i.e., less dependent on "consent", more subject to "control"), but also about how to empower individual and collective agents so that they are capable of effectively exercising mechanisms of control.

Sabrina Zucca-Soest Helmut-Schmidt Hambrug (Political Sciences)

Civil disobedience, consent and representation

Current debates focus on civil disobedience as a drastic form of the climate protests. These protests, both on a theoretical level and in political and legal reality, are a prime example of a social movement that operates in the controversial area of the relationship between legality and legitimacy. Civil disobedience describes a form of protest that is decidedly based on breaking the law or refusing (positivised) obedience to the law, and yet declares itself to be a legitimate activity. So if we want to think about protest in a substantive way, it is essential to first reveal the basic political, legal and philosophical assumptions. However, civil disobedience is much more than just a form of protest, as it fundamentally points to the deeper relationship between citizens and the state, the concepts of legality and legitimacy, and thus to the underlying ideas of law, power and violence. The overarching framework encompassing all these fundamental questions is the relationship between law and morality.

The categorisation of civil disobedience in these circumstances reveals first and foremost the underlying understanding of democracy. This is because each categorisation implicitly takes a position on the requirements and consequences of (un)fulfilled demands for consent and representation.

In modern democratic states, the evaluation of the respective reflexive relationship of violence between citizens and the state depends on these claims. Violence is understood here as an unsuccessful relationship between consent and representation: The separation and interlocking of powers, as well as the parties' claim to (state) violence, can no longer be legitimised by a fictional unified representation and an equally fictional principal-agent model, but must be constantly re-examined and activated by a complex representation of difference (Lhotta 2023, 2020 & 2009).

Urbinati and Warren argue that representation and participation are not alternatives to each other, but related forms of political judgement and action in modern democracies: “Given the complex and evolving landscape of democracy, however, neither the standard model of representation nor the participatory ideal can encompass the democratic ideal of inclusion of all affected by collective decisions. To move closer to this ideal, we shall need complex forms of representation—electoral representation and its various territorially based cousins, self-authorized representation, and new forms of representation that are capable of representing latent interests, transnational issues, broad values, and discursive positions. (Urbinati/Warren 2008: 412).

In order to analyse civil disobedience in a substantive way, it is necessary to place it in a broader (legal) theoretical, political and meta-theoretical background. To this end, civil disobedience will first be considered (1) as a form of protest in its legal and political dimension, and (2) as a focal point of the relationship of violence between citizens and the state as a result of the ideas of consent and representation. The results will be (3) integrated into the broader context of the relationship between legality and legitimacy, in order to finally (4) raise the fundamental question of the legitimacy of law as a statement on the relationship between law and morality.

Alma Diamond University of Michigan (Law)

The Politics of Contractual Autonomy

This paper scrutinizes the conventional dichotomy between "contract" and "status," typically seen as a historical transition from societal ordering based on birth and kinship to one grounded in individual choice and agreement. In status-based societies, individuals' roles and responsibilities are fixed by their inherited social positions. Conversely, in contract-based societies, personal autonomy and choice define normative relations. This narrative emphasizes autonomy as a central value of contracts, portraying individuals as authors of their own lives through their choices.

While this narrative is compelling, it overlooks the reality that contract itself can be a form of status, involving distinct external impositions. By examining David Enoch's distinction between autonomy as sovereignty (control over one's decisions) and autonomy as nonalienation (harmony with one's decisions), this paper argues that contract often involves trading one form of autonomy for another. For instance, sovereign choices in employment contracts may alienate individuals from the decisions governing their lives, while implicit endorsements in adhesive form contracts undermine explicit sovereign choice.

Additionally, drawing on Renzo's distinction between making an autonomous choice and living an autonomous life, the paper highlights how contracts focus on discrete choices, which can fragment an individual's overall autonomy. Discrete contractual decisions made under contingent constraints may alienate individuals from the normative standards they would prefer if they could exercise autonomy over their lives as a whole.

The paper concludes that contract involves inherent forms of alienation rather than the absence of it. The key normative question is how to justify the unique alienations within contract if its link to autonomy is more descriptive than justificatory. Building on Robert Selznick's notion that certain forms of alienation require political participation in shaping the background rules, the paper proposes that membership—an inherently constitutional ideal—provides a framework for addressing these issues. Finally, it explores the implications of such membership and participation for specific areas of contracting, like arbitration clauses, suggesting that political engagement in these background rules is crucial for justifying the forms of alienation inherent in contracts.

Elisabetta Orlandi Independent (Literature)

Consent in Folktales: oral versions versus published versions

The Italian writer Italo Calvino once wrote: «Tales are true». Folk and fairytales, as well as myths and legends, mirror paths, perspectives, and fates that we as human beings may encounter along our lives. Fairytales, fables, myths, and legends are a privileged magnifying glass to understand both society and individuals. They offer a privileged perspective on crucial issues such as love, responsibility, justice, guilt, punishment, freedom, desire, consent.

The question of consent in traditional folktales has been gaining a certain prominence: a few years ago, some parents asked The Sleeping Beauty to be removed from the curriculum for younger children, arguing that it promotes unacceptable sexual behaviour - a prince kissing a woman while she sleeps. In addition, female characters in traditional folktales are often imagined as passive, waiting to be rescued, little more than a silent, acquiescent prize for brave young men – or rich and repugnant old ones. Such a description, as well as the above interpretation of The Sleeping Beauty are far from being accurate: in all cultures, female characters appear to be strong-willed and proactive.

Folktales and fairytales are passed down both orally and through fixed forms: in the first case, each and every storyteller has given their own version of the tale, whereas in the second case – which includes written texts, but also movies, cartoons, songs, videogames: all that relies on a medium other than the human voice and memory – the version of the tale does not change according to the teller. My work aims at defining characteristics, role and consequences of consent in folk tales and fairytales, focusing mainly on those situations where female characters are involved. More in detail, I will be pointing out similarities and differences of forms, structures, and role of consent in Beauty and the Beast (Mme de Villeneuve) and Sun, Moon and Talia (G. Basile), comparing them with the oral versions reported by the Italian writer Italo Calvino, and the Veronese folklorists Dino Coltro and Ettore Scipione Righi.

Ana C. Gómez Sierra Georgia State University (Philosophy)

Citizenship Education for Political Revolutions

I explore how social contract theory helps explain why citizens engage politically to drive major constitutional amendments, especially regarding human rights. I argue that political consent manifests in varying degrees, and both traditional and modern contractarians provide valuable insights into these variations. Besides offering background on the philosophical theories involved in this social explanation, in this presentation, I highlight key aspects of educating the public to facilitate the active participation of different social groups, such as college students.

Anabel van Toledo and Veerle van Wijngaarden
Independent/University of Amsterdam (Philosophy)

Consent as Paradox: a philosophical-psychoanalytical critique of 'sex as conversation'

In The Joy of Consent (2023), Manon Garcia points towards the ambiguity of sexual consent by arguing that if someone said yes to sex, it doesn't necessarily mean that she actually wanted or desired to have sex. There could have been other reasons for her to consent (e.g., out of fear) or she could have changed her mind during the act. In order to deal with this ambiguity, Garcia introduces 'sex as conversation' in which consent can be reconsidered along the way.

In this paper, we problematise this view, following the insights of feminist iterations of Lacanian psychoanalysis (Mitchell 2000; Rose 2021; Zupančič 2017). Whereas 'sex as conversation' presupposes a self-knowing subject, these theorists show that the constitution of desire and subjectivity is fundamentally unstable. 'Sex as conversation' assumes that people enter into social relations knowing what they want. Lacanian psychoanalysis, however, shows that in reality this is often not the case. Our desires are continuously (re)shaped in relation to (the desires of) others and this process is fundamentally unknown to us. Because of this, subjects are often uncertain about what they want. Jacqueline Rose calls this the paradox of sexuality: sexuality is fundamentally undecidable and uncertain. If this is the case, we should ask, how can a subject that is never fully certain about its desire, formulate what it wants? 'Sex as conversation' as Garcia proposes is therefore problematized.

However, despite the fact that people often do not know what they want, we know that something can be violated. After all, sexual violations are a widespread societal issue. The aim of this paper is to develop an account of sexual consent that takes into consideration the paradoxical nature of sexuality, while still seeking legal redress against sexual violations.

ABSTRACTS

MEDICAL LAW AND ETHICS

Lisa Forsberg University of Oxford (Philosophy)

Is consent to psychological interventions less important than consent to bodily interventions?

It is standardly accepted that medical interventions can be permissibly administered to a patient who has decision-making capacity only when she has given her valid consent to the intervention. However, this requirement for valid medical consent is much less frequently discussed in relation to psychological interventions ('PIs') than it is in relation to bodily interventions ('BIs'). Moreover, legal and professional consent requirements in respect of PIs are laxer than the analogous requirements in respect of BIs. One possible justification for these differences appeals to the Differential Importance View—the view that it is presumptively morally less important to obtain explicitly given valid consent for PIs than for BIs. In this article we argue against the Differential Importance View by considering and rejecting three possible justifications for it. These invoke differences between PI and BIs with respect to implicit consent, risk, and wrongfulness.

Marie-Andree Jacob University of Leeds (Law)

Enclosures and exceptions in deemed consent to organ donation

The Organ Donation (Deemed Consent) Act 2019 and Human Tissue (Authorisation) (Scotland) 2019 (and associated legislation in Wales (2013) and more recently in Northern Ireland (2023)) modified what counts as 'appropriate consent' in the Human Tissue Act for deceased organ donation and transplantation. Instead of requiring a recorded consent/opt-in to donate, the law can now consider consent to donate (or authorisation) 'deemed' in the absence of a recorded opt-out. These laws aim to increase the number of transplantable organs and to provide a closer alignment between organ retrieval practices and the genuine, even if not express, wishes of potential donors during their lifetime. (Wilkinson 2022: 289). They also produce a national collective 'give and take' as the ethical basis for organ donation.
This paper asks what we can learn about the legal category of consent by looking at the detailed mechanics of framing it as 'deemed consent' (or authorisation). Instead of rehearsing the pros and cons of the deemed consent model, I will examine the scope of the model by paying attention to its exceptions, in particular the category of 'excepted persons' from whom consent still needs to be active. To better understand the external and built-in pressure points of deemed consent, I will pay close attention to how the legislation and associated Codes of Practice have historically developed to carve a middle area of layered decision-making that sits between law on paper and clinical interactions, and is made of professional discretion, family input, and paperwork.

ABSTRACTS

CONTRACT AND FAMILY LAW

Gilat J. Bachar Temple University (Law)

Non-disclosure as Consent

What is the relationship between a defendant's demand for nondisclosure as part of a settlement negotiation and a plaintiff's coercion which might negate their consent? While the defense of duress can be used to invalidate any contract, including a settlement agreement, the role of a demand for silence as contributing to such duress has not been explored to date. It is crucial, too, given the prevalence of nondisclosure clauses in settlement agreements and the fact that they are often used by disproportionately powerful alleged defendants, as the #metoo movement exposed.

The paper traces the philosophical discussion regarding coercion, as well as how coercion has been understood and applied in contract law. In particular, an analogy is drawn between the role of coercion in confidential civil settlements and in criminal plea-bargains. This background is used as analytical leverage to argue that contrary to courts' reluctance to acknowledge duress in civil settlement, some civil settlement offers—in what I call "High-Risk Settlements"—might in fact be coercive when settlement is conditioned on confidentiality. The paper proposes several factors which can contribute to such coercive situations.

Adding an empirical perspective to the discussion, the paper also presents findings from a recent survey experiment of a representative sample of 500 Americans exploring the relationship between settlement confidentiality and plaintiffs' experience of being pressured into settling products liability and sexual harassment disputes. Among other findings, the study shows a statistically significant effect that confidentiality has on plaintiffs' sense of pressure to settle in the sexual harassment—but not in the products liability—scenario. Regarding sexual harassment, sense of pressure to settle was also positively correlated with a respondent's assessment of the likelihood of a defendant's future wrongdoing.

Marrying the legal theory and these empirical findings, the paper examines the ways in which concerns of plaintiff coercion should inform the enforcement of confidential settlements, including the extent to which invalidating such agreements might sometimes harm rather than help plaintiffs. The paper addresses a dimension yet to be considered in the propriety of nondisclosures: a potential coercive effect resulting from silencing those who have been wronged.

Irina Sakharova *Durham University* (Law)

Consenting, Promising, and the Power to Contract

In moral philosophy, there are different approaches to understanding consent as a normative power and, in particular, to how this power must be exercised to generate specific normative changes in specific circumstances. It might be fair to observe that when a reference to consent is made, more often than not consenting is understood as giving permission, but consent as a normative power has been conceptualised in two (different) ways: as a 'proprietary gate' (eg giving a license) or as a 'normative rope' (eg assuming an obligation). It might be thought that the second (and arguably more controversial) understanding of consent is most relevant to promising and, by extension, to contracting if contracting is seen as promising, but both understandings have influenced, in one way or the other, the philosophy of contract law and, in particular, have found their application in various contract theories. Moreover, the language of consent features quite prominently in almost all accounts of contracting, and even though when the term 'consent', as well as its derivatives, is used, it often expresses 'nothing more' than some idea of 'voluntariness', it is also not infrequently deployed with reference to the normative power to consent. While drawing on how consent as a normative power is understood in moral philosophy, the paper examines whether either the idea of consent as a 'proprietary gate' or the idea of consent as a 'normative rope' could be helpful in explaining how contractual obligations are created and challenges the accounts that reduce the normative power to enter into a contract—the power to contract—to the normative power to consent.

Janeen Carruthers & Felicity Belton University of Glasgow (Law)

Free and Full Consent to Marry – Reflections on Law and Practice

The paper will situate the discussion of consent in the context of forced marriage law and practice in Scotland. We shall draw on our research project, Combatting Forced Marriage: Strengthening Protection in Scots Law, to examine the notion of consent to marry and the related concept of legal capacity to marry, and shall evaluate Scottish civil and criminal law responses to deficient consent caused by duress, error or tacit reservation.

We shall consider lack of consent as a ground of nullity of marriage, and assess the impact of choice of law rules for marriage contained in the Family Law (Scotland) Act 2006 which, as a matter of policy, sometimes elevate Scots rules on consent over any contrary rules of an individual's personal law. We shall assess the effectiveness of civil legal remedies against forced marriage, and review the impact of criminalisation.

We shall highlight the vitiating effect of error upon consent, and the statutory solution to the problem of abuse of the institution of marriage through tacit reservation of consent ('sham marriage'), as manifested in the case of Hakeem v Hussain (2003 SLT 515; SH v KH 2005 SLT 1025).

Finally, we shall reflect on the issue of 'child marriage', exploring how questions of legal capacity and consent – often viewed as distinct aspects of the essential validity of a marriage – are intertwined; the question whether an individual is capable of exchanging consent to marry. The response of Scots law to child marriage will be set against the international human rights background, and contrasted with the response of English law in the Marriage and Civil Partnership (Minimum Age) Act 2022, which raised the minimum age of marriage to 18 years in all circumstances in England. We shall flag policy tensions, including those that emerge from the cross-border character of many cases.

ABSTRACTS

PGR SESSION *CONSENT TO SEX*

Leonie Buning Osnabrueck Univeristy (Philosophy)

"Against the Recognisable Will of the Other Person": Sexual-ethical Considerations of StGB Germany § 177 (1)

Since 2016, German law defines various kinds of sexual assault as sexual acts against the recognisable will of the other person (cf. StGB Germany § 177 (1)). The central method of legal examination of specific cases is to determine whether anyone involved in the sexual encounter in question has recognisably objected. This reflects not only the general use of consent as the difference maker between (prima facie) morally permissible sexual interaction and morallyimpermissible sexual violation, but the notion of veto-consent in particular. Contrary to popular belief, valid consent does not mean that the consenting party wants the act to take place. In fact, the relationship between 'consenting to φ' and 'wanting φ' is more complicated than that. Firstly, when considering the concept philosophically, it is quite unclear what is meant by the '(recognisable) will'. Secondly, in the standard account of consent, whether one wants φ (to happen) is actually neither constitutive of consent nor does it have any bearing on its validity (cf. Alexander 2014: 108). In light of these premises, I would like to work out what exactly it means that an action takes place against a person's will and what the relationship between 'consenting to φ' and 'wanting φ' looks like on this basis. According to my theory, sexual violations might not only be wrong because they take place without the consent of one or more of the persons involved, but also because they happen against the will of these persons. This distinction should help to clarify the legal notion of StGB § 177 (1), refine whether what is implied by ,,recognisable will'' is actually ,,recognisable dissent'', and indicate what the paragraph should — on the basis of my argumentation — ideally refer to.

Eli Benjamin Israel Temple University (Philosophy)

Revisiting Consent's Transformative Power

Philosophers like saying that consent has a "normative power," and thus, every other paper in this literature quotes Heidi Hurd's saying "consent turns a rape into love-making, a kidnapping into a Sunday drive, a battery into a football tackle, a theft into a gift, and a trespass into a dinner party" (Hurd 2004, 504). Even those who do not consider consent to be quite so magical acknowledge that when consent is properly and autonomously given (and therefore valid), it determines what actions are permissible for one person to take towards another (Enoch 2020, 159). In this paper, I argue that this notion is false, as we can conceive of scenarios where consent is validly given, yet the relevant action still fails to be consensual.

My argument challenges the prevailing understanding that non-consensual scenarios (e.g., rape) differ from their consensual counterparts (e.g., sex) solely on normative grounds. Instead, I contend that these scenarios should be understood as fundamentally distinct actions. This leads me to propose that consent is modally, rather than normatively, transformative. In other words, consent can only make certain acts, which are inherently consensual in nature, possible. However, it is ultimately up to the consent-receiver to choose whether to actualize that possibility.

Madeleine Kenyon University of Waterloo (Philosophy)

Let's Talk About Sex: The (limited) role of consent in sexual discourse

In this paper, I argue that a feature of sexual consent discourse which contributes to the complicated nature of current philosophical debate about consent's utility is that consent is often ambiguously treated as a central feature of not only non-criminal sex, but also of good sex. Acceptable sex, which is the focus in much of the consent literature, seems to blend these notions of non-criminality and goodness together in ways which make the discourse morally messy. On my account, sex has multiple meaningful ethical dimensions along which it can be judged; sex can be consensual or nonconsensual, it can be responsible or irresponsible, it can be pleasurable or unpleasurable. These dimensions come apart, and sexual consent, though often treated as relevant to all features of sexual experience, is not (or, at least, not directly) relevant to whether sex is 'good' or not. In fact, I argue (maybe surprisingly) that consent is only directly relevant to the legal permissibility of a sexual encounter, and not to whether the sex is responsible or pleasurable. Addressing this misapplication of sexual consent, then, involves identifying and communicating the scope of sexual consent. And delineating this scope requires better articulation of the three core ethical dimensions (consent, responsibility, pleasure) that I take to comprise sex. I highlight what these dimensions involve, how they work together and come apart, and why I take them to resolve some of the philosophical disagreement over the role of consent in sexual ethics. I close this paper by considering how rape culture has contributed to the (I argue, mistakenly) overarching position that consent holds in the philosophical literature on sex.

Melissa Bell Romero Pomeu Fabra University (Law)

Why the increasingly popular affirmative standard of consent doesn't solve the problem of rape

It has been argued extensively by Catharine MacKinnon, amongst others, that consent is not fit for purpose in the law of rape. She has made the case that consent describes interactions with disparate power imbalances, and therefore from a feminist perspective consent prevents the law from understanding women as equal autonomous actors in sex. On the other hand, across Europe the affirmative consent standard has gained support by various lawmakers. Some view this movement as the feminist solution to solving the rape crisis, however, my contention is that this is a partial solution that does not rectify the core issues with consent as a concept.

I aim to address two issues. First, the fact that affirmative consent does not recognise situations where a 'yes' is not given freely, for example, instances where there is no power to say 'no', or where 'no', or further, physical resistance, will potentially increase the violence involved.
Secondly, affirmative consent does not solve the issue that the determination of rape depends entirely on the victim's internal state of mind and not on the external circumstances, creating a legal double standard where the victim is the focus of investigation, unlike other crimes such as robbery or trespass.

Therefore, what is the alternative to affirmative consent? I argue that coercion, if applied effectively and through a gendered lens, may provide a solution to these issues. Whilst coercion is a standard which has traditionally been considered more restrictive to the definition of rape, this need not be the case. First, coercion would address the issue of ensuring that an affirmation is actually freely given. Secondly, it shifts the focus of rape from the internal sphere of the victim to the external sphere, requiring a study of all the surrounding circumstances.

Mireia Marquez University of Barcelona (Law)

The Morality of Sexual Consent in Prostitution

In the philosophical and criminal law literature, there are different positions regarding the morality of sexual penetration. An interesting point of view is presented by M. M. Dempsey and J. Herring, whose theory argues that penetrative sex is prima facie wrongful and requires justification. This view offers a useful theoretical framework for analysing the topic of prostitution. Specifically, their theory lays the groundwork for addressing two questions: (1) Is it morally acceptable to pay for sex? and (2) how does the offer of money affect the validity of the prostitute's consent? This paper integrates an application of their theory with broader discussions on the topic of prostitution, with the aim of answering these two questions. The first question has been extensively debated in the literature.

The core issue of the discussion is whether the moral quality of buying sex turns on contextual factors. Some argue sex work is not inherently wrong, while others point to economic and social conditions to argue its moral wrongness. By applying Dempsey and Herring's theory, I conclude that buying sex is prima facie wrong, regardless of context. The second question highlights an often-overlooked aspect: the specific sexual consent of the prostitute. The debate typically raises questions about the consent a person provides to work as a prostitute, viewing prostitution as either a job or an exploitation, but not in terms of the sexual interaction that prostitution implies. Dempsey and Herring's theory enables us to examine the consent given by a prostitute to a specific sexual interaction. I conclude that, despite economic pressure and lack of desire, the buyer can accept the prostitute's consent as justification for his conduct. In essence, this paper explains why the act of purchasing sex is prima facie wrongful and how the consent of the prostitute can justify the buyer's action.

ABSTRACTS

PGR SESSION *GOVERNMENT*

Juliana Taig University of Munich (Law)

Strengthening Democratic Resilience Against Authoritarian Populism

The principle of consent by the governed is fundamental to democratic theory. But what happens when those governed elect a party whose goal is to systematically erode democratic institutions and transition to authoritarianism? This question is pressing, given the recent successes of authoritarian populist parties in many democratic countries and especially the transformations that took place in Hungary and Poland.

In Germany, the fascist AfD (Alternative für Deutschland) party has led polls for upcoming state elections in three Eastern German states, consistently achieving around 30% of the vote. Over the last year I worked in a research project called the "Thuringia Project" that examines what could happen if an authoritarian-populist party like the AfD were to gain power in Thuringia. By analyzing possible scenarios, we aim to highlight the risks of a step-by-step erosion of democracy, similar to what has occurred in Hungary and Poland. Our goal is to inform and mobilize citizens to recognize and resist authoritarian measures before it's too late.

Additionally, our project proposes policy ideas designed to strengthen institutional resilience against authoritarian-populist rule. These policies aim to delay any democratic backsliding, providing democratic parties with the time needed to reclaim power and halt the authoritarian transformation.

Given Germany's historical context, particularly the rise of fascism in the 20th century, it is crucial to consider how such parties can be prevented from taking power. This concern aligns with the concept of "militant democracy" introduced by Karl Löwenstein, a Jewish German lawyer and political scientist who fled the Nazi regime. Löwenstein's theory confronts the paradox of defending democracy against those who might exploit democratic processes to destroy it from within.

Ludovica Filieri Verona (Philosophy)

The essence of democracy. Spinoza on consent

In the history of modern philosophical thought, Hobbes has always been regarded as the reference theorist of the State, of its institution on the basis of the social contract and thus of the preservation of its power. Parallel to this theoretical line, the same line that runs through authors such as Rousseau and Hegel, also reference theorists of dialectical and state-contractualist thought, contemporary criticism has identified another, parallel one, that places the nature of the democratic State at the centre of its reflection. The reference authors of this alternative current of philosophical, political and legal thought are Machiavelli, Spinoza and Marx.

In particular, from the 17th century onwards, Spinoza is indicated as the true proponent of Western democratic thought and theorist of the modern State par excellence. For Spinoza, political society is not an order imposed from outside on individual desires, nor is it constituted by a contract, by a cession of rights from which a transcendental obligation would result. It is the result of interactions between individual powers, which, by composing themselves, become a collective power, a multitude (multitudo).

In this perspective, within his political thought, among others, the theme of consent plays a key role, which allows us to understand the innovation of Spinoza's political - and legal - theory, as well as its relevance today. Spinoza assumes from the very beginning the identity of right and power, whereby «each natural thing has as much right by nature as it has power to exist and to act». However, he adds that «if two individuals agree and unite their powers, together they can do more and, consequently, they have more right by nature than each taken individually, and the more they unite their relations, the more right they have together».

The free association of citizens who decide by consensus to unite under a common right gives rise to the democratic state: «this right, which is defined by the power of a multitude, is called government, which is governed absolutely by those who, by common consent, take care of public affairs, that is to say, of establishing, interpreting or abrogating laws, defending cities, deciding about war and peace. If this task is the responsibility of a council, composed of the entire population, then it will be called democratic government».

Civil law itself is the power of the "multitudo". The form of contract is replaced by consensus, the method of individuality by collectivity.

We shall investigate why democratic government is the most natural for human nature, as much for legal practice as for political life, clarifying the centrality of the role of consensus for its foundation in Spinoza's thought.

Evgenia Sonnabend Freiberg/Free Berlin (Philosophy)

A Hegelian Perspective: Conceptual Limitations of the Notion of Consent in Contract Theories

Both the classical representatives of contract theories (Hobbes, Locke, Rousseau) and
Hegel ground their political philosophy on the notion of the will. Though sharing this starting point,vthey deviate in their accounts when it comes to the will-based notion of consent. A Hegelian perspective illuminates the limits of the notion of consent: 1) in its ability to legitimise state power, 2) in being a sufficiently determined concept, and 3) in its relevance for civilian rights and duties.

1. According to Hegel, consent falls short as the legitimising instrument of state authority
because it is based on a paradoxical account of freedom: the freedom of individuals is used to justify the restriction of this very individual freedom by higher authority. Consequently, after subsumption under state power, one has 'less' individual freedom than before. Contrary to this, Hegel claims that a state is legitimate when one has 'more' freedom in it (than in a state of nature) as one sees one's will being realised in concrete social institutions.

2. Consent expressed in a social contract is furthermore an abstraction that is then applied to
existing societal conditions. As an abstract, underdetermined concept, it is meaningless because, put simply, people do not know what they are consenting to. Rather, people should be able to recognise their will as being fulfilled (objectified) in concrete socio-historical institutions.

3. Hegel identifies a state of law as one of the hallmarks of modernity. In a modern state,
morality is sublated in a juridical order. Thus, consent, in order to be a useful conceptual instrument, should be able to ground not only the moral duty to obey the law as it occurs in contract theories but also, what might sound counter-intuitively, the right to obey the law.

Despite Hegel's critique of the notion of consent, he does not fully abandon it. He acknowledges that the state as a whole has to be wanted or willed. Hence, he argues for a more complex account of consent, which would overcome the aforementioned limitations. Hegel's alternative account of consent is performative: consent is something that has to be carried out at all times instead of being hypothetically signed once in a social contract.

Sarah Ketteniß University of Hamburg (Political Sciences)

Re-Traditionalizing Consent: Right-Wing Populism, Gender Roles, and the Social Contract in Modern Democracies

Since the inception of political theory, debates have persisted regarding the mechanisms by which governance can be both achieved and legitimized. Central to these discussions is the concept that the legitimacy and authority of a government or political system derive from the consent of the governed. Thus, the notion of political consent is a fundamental principle in political theory and democratic governance.

This paper aims to unravel the concept of political consent as viewed through the prism of the social contract theory, focusing on the foundational ideas of philosophers like Hobbes, Locke, and Rousseau. It's crucial to understand that the social contract theory continues to exert a profound influence on our modern understanding of democratic governance, particularly in the face of contemporary challenges and, therefore, the growing lack of trust in democratic governments. Given that especially populist parties often exploit this erosion of faith in democracy, it is pertinent to examine how political consent is framed within the context of populism.

Political consent can manifest in various forms, but providing such consent requires participation in the public sphere where political activities occur. Historically, women were excluded from this public sphere, confined instead to the private sphere as housewives and mothers, responsible for domestic life and child-rearing.

In recent decades, women have successfully claimed their place in the public sphere, largely through feminist efforts. However, the emergence and growth of right-wing populist parties now pose a significant and urgent threat to these hard-won advancements.

In the European context, the rise of right-wing populism warrants specific attention to the intersection of gender and political discourse. Right-wing populist parties, especially those with anti-feminist stances, advocate for the re-establishment of conservative policies on family and gender issues. This raises critical questions about the implications for women's rights if such parties gain political power and seek to re-traditionalize gender roles in Western societies.

This paper aims to analyze the strategies employed by right-wing populist parties to retraditionalize gender roles and assess the potential impact on women's political participation and their capacity to provide political consent.

ABSTRACTS—

PGR SESSION *MEDICAL AND AI ETHICS*

Luíza de Paula Araújo Galvão Cunha University of Barcelona (Law)

A critical examination of consent and alienation in the context of using a neurotechnology called Brain-Computer Interfaces (BCIs)

This research addresses an ethical dilemma related to the concept of consent in the context of using a neurotechnology called Brain-Computer Interfaces (BCIs). BCIs are complex neurotechnologies that allow the integration of the human mind with external devices, making it possible to control brain impulses through pattern classification algorithms. BCIs can interact with humans in two ways. First, when the technology user controls its own use (self-control). Second, when a third party (or an artificial intelligence system) controls the use of technology implanted in a person (exocontrol). For the purpose of this article, we will focus on the perspective of exocontrol. It is important to analyse consent from this perspective, because the use of this neurotechnology, combined with artificial intelligence, can yield unpredictable and nonspecific results. Therefore, within the context of consent, it is crucial to clearly understand the scope of the authorized actions. The issue at hand differs from those that have been discussed throughout human history. When we grant consent to someone for a sexual act, for instance, we are aware that the other individual may exhibit unexpected behaviors, and thus consent can be withdrawn at any time. However, when it comes to a machine whose behavior has been pre-programmed, the expectation changes in scale. It is reasonable for any human being to have realistic expectations that the machine will react according to its programming. In this context, if there is an unprogrammed change in the machine's behavior, the breach of expectation must be handled differently, especially if it results in a complex alienation of the person, resulting in a significant impact on the concept of consent. This study delves into a critical analysis of the concepts of consent in contrast to the concept of alienation within the context of third-party controlled neurotechnologies.

Mollie Cornell University of Bristol (Law)

What Are You Protecting? Consent, Autonomy and Authenticity in Medical Decision-Making

Consent is central to how English law frames all questions about decision-making. It is the basis of the absolute right to refuse medical treatment of adult patients who have decision-making capacity. However, this right to consent or withhold consent is limited to persons who can demonstrate that they can understand, retain, and use and weigh relevant information. Thus capacity, through the Mental Capacity Act, is a gatekeeping concept for the right to have one's consent matter. Some argue that this amounts to a discriminatory view towards disabled people.

To an extent, this concern stems from popular philosophical accounts of autonomy which tie the capacity for autonomous decision-making with the notion of respect for personhood. A recent response to this valid concern is the emergence of the 'will and preferences' paradigm which aims to empower disabled persons by treating a patient's consent or lack thereof as valid, regardless of their capacity. However, within the context of mental illness this is highly problematic as it presumes that it is assumes that the present wishes and feelings of a person experiencing mental disorder are authentic to them.

This paper presents a more nuanced consideration of capacity by asking what it is that consent aims to protect, be that autonomy, bodily integrity or a more metaphysical conception of an authentic self. Working within the phenomenological tradition and building particularly on the work of Merleau-Ponty and Somogy Varga, this paper explores what it means to be autonomous and how this is a conceptually separate question from what it means to be authentic. The paper then concludes that where someone lacks the capacity to consent to medical treatment, authenticity rather than autonomy should be the guiding normative principle when making decisions on their behalf.

Rebecca Brione Kings College London (Philosophy)

Refusal and Consent in Intimate Touch: A New Account

Sexual touch is high stakes touch. Many people agree that consent and refusal in this context have a particular importance in allowing people to protect their interests in bodily integrity and autonomy. Medical touch may be similarly high stakes, especially in relation to penetrative clinicals examinations. Both forms of touch also share a tension between black-letter legal requirements for positive consent and widespread testimonies of unwanted and unconsented penetrations. In the medical case, such testimonies are particularly prevalent during childbirth, a notably-gendered context. In this paper, I argue that there are good reasons to think that, whilst there is not a complete analogy between the two scenarios, scholarship on sexual consent and refusal can usefully shed light on the same in the context of clinical penetrative examinations.

In the sexual context, much recent scholarship has focussed on positive consent. However, I argue that it remains important to ask questions about refusal, both in terms of the normative scope of refusal in a 'consent-required' context, and what is required for a refusal to succeed. Surprisingly, there is no current consensus over the normative scope of refusal in contexts in which positive consent is necessary. Some accounts of refusal argue that it creates a "duty to desist": but this cannot be correct in a situation in which that duty pre-exists the refusal. Others argue that refusal is a form of permission-denial, characterising refusal as the counterpart of consent. In this paper I trouble both conceptions of refusal and present a new normative account of refusal in contexts in which positive consent is required for action. Having set out this new account, I go on to show (a) how it can shed light on cases of failed refusals, and (b) what this tells us about the practical limits of the consent law.

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